

UNITED STATES DISTRICT COURT

# DISTRICT OF NEVADA

\* \* \*

## THEODORE F. LEE,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:13-cv-00483-JAD-PAL

## ORDER AND ORDER TO SHOW CAUSE

(Mot Cont Stay – Dkt. #62)

12 Before the court is Plaintiff Theodore Lee's Motion to Continue to Stay the Proceedings  
13 Until a Civil Income Tax Refund Action can be Filed for 2006 (Dkt. #62). The court has  
14 considered the Motion, Memorandum in Support (Dkt. #63), Declaration of Edward O.C. Ord in  
15 Support (Dkt. #64), the government's Opposition (Dkt. #65), and Lee's Reply (Dkt. #67).

## BACKGROUND

17        This is one of three cases filed in this district relating to Lee’s 2006 tax liability. The  
18 government filed the first action, Case No. 2:12-cv-1994-GMN-PAL, to enforce an IRS  
19 summons served on Lee June 7, 2012. *See* Petition to Enforce (Dkt. #1). This is the second-filed  
20 action, and involves a Complaint (Dkt. #1) against the United States to quash a Formal  
21 Document Request (“FDR”) dated May 31, 2012. The Complaint was initially filed in the  
22 Northern District of California because counsel for Lee accepted service of the FDR in San  
23 Francisco, California. However, the case was transferred to this district where Lee resides. The  
24 third action, *Lee v. United States*, 2:14-cv-00606-RCJ-PAL, was filed April 21, 2014, and is a  
25 complaint to recover a tax refund for the 2006 tax year.

26 The government moved to dismiss its petition to enforce the IRS summons in Case No.  
27 2:12-cv-1994-GMN-PAL because the parties resolved their disputes about the documents the  
28 government sought, and the government was ultimately satisfied that Lee had complied with the

1 summons. Lee opposed the government's motion to dismiss, arguing the action should be  
 2 maintained so that he could challenge the government's ability to use any of the testimony and  
 3 documents it obtained by summons and FDR in a tax refund case he intended to file. On  
 4 November 20, 2014, the district judge granted the government's motion to dismiss its petition to  
 5 enforce over Lee's objection and denied Lee's Motion to Stay (Dkt. #45) and Motion to Strike  
 6 (Dkt. #55) as moot. *See Order and Clerk's Judgment* (Dkt. ## 61, 62).

7 Lee filed this action challenging the IRS's authority to issue a FDR at the same time it  
 8 was pursuing a petition to enforce its summons for the same documents. Counsel for Lee and  
 9 counsel for the government negotiated about the documents Lee would produce in response to  
 10 the summons and FDR, Lee produced documents, and the government is satisfied Lee has  
 11 complied with both the summons and FDR. However, Lee's Motion to Stay (Dkt. #62) requests  
 12 a stay until Lee could file his tax refund case. He also seeks consolidation of all three cases  
 13 before one judge to decide "these inextricably intertwined" cases and issues in one proceeding.  
 14 Motion at 2:3-4.

15 The United States opposed the stay and consolidation of all three actions, acknowledging  
 16 that the factual and legal issues of this case and the first-filed action (Case No. 2:12-cv-1994-  
 17 GMN-PAL) are the same and that they are related cases. The United States objects to  
 18 consolidating this case with the tax refund case, arguing the two cases do not involve common  
 19 factual or legal issues. The issue in this case is whether the IRS issued the FDR in good faith.  
 20 The issue in the tax refund case (Case No. 2:14-cv-00606-RCJ-PAL) is whether Lee overpaid  
 21 his taxes in 2006. The United States also maintains that the instant case is now moot because  
 22 Lee complied with the FDR, and there is no longer a justiciable claim for the court to adjudicate.

23 Lee argues he may maintain this action, notwithstanding his compliance with the FDR so  
 24 that he can prevent the government from using documents obtained by summons and the FDR  
 25 against him in the tax refund case.

## 26 DISCUSSION

27 The United States' Petition to Enforce Summons in Case No. 2:12-cv-1994-GMN-PAL  
 28 has now been dismissed, the district judge having found that because Lee complied with the IRS

1 summons, "there is nothing further to prosecute," and dismissal of that case was appropriate. It  
2 is undisputed that Lee complied with the FDR he challenges in this action. He seeks to maintain  
3 this action and consolidate it with the tax refund case to challenge the ability of the government  
4 to use testimony and documents he provided in response to the summons and FDR. However,  
5 for the same reason the district judge dismissed the first filed action, it appears that since this  
6 action was filed to quash the FDR, and Lee has now complied with the FDR, there is nothing  
7 further to prosecute in this action. Accordingly,

8 **IT IS ORDERED:**

9 1. Lee's Motion to Continue to Stay the Proceedings Until Civil Income Tax Refund  
10 Action Can be Filed for 2006 (Dkt. #62) is **DENIED as MOOT**, Lee having filed  
11 a complaint for a tax refund.

12 2. Lee's request to consolidate this action with the tax refund action is **DENIED**.

13 3. Lee shall have until **December 30, 2014**, in which to show cause why this action  
14 should not be dismissed, as the action was instituted to quash a Formal Document  
15 Request, and Lee has now complied with that request.

16 4. The United States shall have until **January 14, 2015**, in which to file a responsive  
17 memorandum.

18 5. Lee shall have until **January 21, 2015**, to file a reply to the government's  
19 response.

20 DATED this 1st day of December, 2014.

21  
22  
23   
24 PEGGY A. SEEN  
25 UNITED STATES MAGISTRATE JUDGE  
26  
27  
28